

REMARKS

The Office Action dated July 6, 2010, has been received and carefully considered. In this response, claims 1, 37, and 38 have been amended. No new matter has been added. Entry of the amendments to claims 1, 37, and 38 is respectfully requested. Reconsideration of the pending rejections in the present application is also respectfully requested based on the following remarks.¹

I. THE EXAMINER INTERVIEW

At the outset, the undersigned thanks the Examiner for the courtesies extended during the interview conducted on September 23, 2010, during which agreement was reached on language overcoming the rejections under 35 U.S.C. §§ 101 and 103, which is reflected herein.

Additionally Applicant's representatives and the Examiner agreed to schedule a further interview subsequent to a further

¹ As Applicant's remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicant's silence as to assertions made by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., assertions regarding dependent claims, whether a reference constitutes prior art, whether references are legally combinable for obviousness purposes) is not a concession by Applicant that such assertions are accurate or such requirements have been met, and Applicant reserves the right to analyze and dispute such in the future.

search by the Examiner, in the event additional references relevant to the present application are uncovered.

II. THE NON-STATUTORY SUBJECT MATTER REJECTION OF CLAIM 38

On page 2 of the Office Action, claim 38 was rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. This rejection is hereby respectfully traversed.

Claim 38 has been amended in accordance with the Examiner's suggestions. As amended, claim 38 recites a "computer program product for providing computer security, the computer program product being embodied in a **non-transitory** computer readable storage medium and comprising computer instructions" As amended, Applicant respectfully submits that claim 38 may not reasonably be interpreted as being directed towards either a signal claim or software per se.

In view of the foregoing, Applicant respectfully requests that the aforementioned non-statutory subject matter rejection of claim 38 be withdrawn.

III. THE OBVIOUSNESS REJECTION OF CLAIMS 1-4, 18, 37, and 38

On page 3 of the Office Action, claims 1-4, 18, 37, and 38 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,357,008 to Nachenberg ("Nachenberg") in

view of Calvin Ko et al., Automated Detection of Vulnerabilities in Privileged Programs by Execution Monitoring, Proceedings of the 10th Annual Computer Security Applications Conference, Orlando, FL (1994) (hereinafter "Ko"). This rejection is hereby respectfully traversed.

Under 35 U.S.C. § 103, the Patent Office bears the burden of establishing a prima facie case of obviousness. In re Fine, 837 F.2d 1071, 1074 (Fed. Cir. 1988). There are four separate factual inquiries to consider in making an obviousness determination: (1) the scope and content of the prior art; (2) the level of ordinary skill in the field of the invention; (3) the differences between the claimed invention and the prior art; and (4) the existence of any objective evidence, or "secondary considerations," of non-obviousness. Graham v. John Deere Co., 383 U.S. 1, 17-18 (1966); see also KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727 (2007). An "expansive and flexible approach" should be applied when determining obviousness based on a combination of prior art references. KSR, 127 S. Ct. at 1739. However, a claimed invention combining multiple known elements is not rendered obvious simply because each element was known independently in the prior art. Id. at 1741. Rather, there must still be some "reason that would have prompted" a person of ordinary skill in the art to combine the elements in

the specific way that he or she did. Id.; In re Icon Health & Fitness, Inc., 496 F.3d 1374, 1380 (Fed. Cir. 2007). Also, modification of a prior art reference may be obvious only if there exists a reason that would have prompted a person of ordinary skill to make the change. KSR, 127 S. Ct. at 1740-41.

Regarding claim 1, the Examiner asserts that the claimed invention would have been obvious in view of Nachenberg and Ko. Applicant respectfully disagrees. However, in order to forward the present application toward allowance, Applicant has amended claim 1 to more specifically define the claimed invention, and specifically those features that further differentiate the claimed invention from Nachenberg and Ko, as well as the other cited references. In particular, Applicant respectfully submits that Nachenberg and Ko, either alone or in combination, fail to disclose, or even suggest, a method, as recited in claim 1, for providing computer security, comprising:

determining, using a processor, whether an executable associated with a static state meets one or more first predetermined criteria, **the determination not requiring a known executable, other than the executable associated with the static state, or analysis of behavior of the executable** and including a determination of at least one of: whether the executable is configured as a service and whether the executable is configured to run under a highly privileged account

As conceded by the Examiner, "Natchenberg does not explicitly teach a step wherein the one or more first predetermined criteria allow a determination of at least one of: whether the executable is configured as a service and whether the executable is configured to run under a highly privileged account." Office Action, page 5. Ko fails to remedy these deficiencies

In contrast, Ko, at most, discloses "automated detection of vulnerabilities in privileged programs by execution monitoring." See Ko , Title, Abstract, and Introduction ("Our approach is essentially a specification-based model of intended behavior of privileged programs.") Ko is thus focused on monitoring programs known to have privileges to ensure that they do not misuse privileges. Monitoring the behavior of privileged programs fails to meet at least a "determination not requiring a known executable, other than the executable associated with the static state, or analysis of behavior of the executable," as recited in claim 1. Accordingly, Applicant respectfully submits that claim 1 should be allowable over Natchenberg and Ko.

As stated in MPEP § 2143.03, to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981 (CCPA 1974). That is, "[a]ll words in a claim must be

considered in judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382 (CCPA 1970).

Regarding claims 37 and 38, while different in overall scope from claim 1, these claims recite subject matter related to claim 1. Thus, the arguments set forth above with respect to claim 1 are equally applicable to claims 37 and 38. Accordingly, Applicant respectfully submits that claims 37 and 38 should be allowable over Nachenberg and Ko for analogous reasons as set forth above with respect to claim 1.

Regarding claims 2-4, and 18, these claims are dependent upon independent claim 1. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071 (Fed. Cir. 1988). Thus, since independent claim 1 should be allowable as discussed above, claims 2-4, and 18 should also be allowable at least by virtue of their dependency on independent claim 1. Moreover, these claims recite additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination.

In view of the foregoing, Applicant respectfully requests that the aforementioned obviousness rejection of claims 1-4, 18, 37, and 38 be withdrawn.

IV. THE OBVIOUSNESS REJECTION OF CLAIMS 7-17 AND 29-36

On pages 8-13 of the Office Action, claims 7, 8, 10, 12-17, and 29-34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nachenberg and Ko in view of U.S. Patent Application Publication No. 2004/0143749 to Tajalli et al. ("Tajalli"). On pages 13-14 of the Office Action, claims 9, 11, 35, and 36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nachenberg and Ko in view of U.S. Patent Application Publication No. 2005/0108562 to Khazan et al. ("Khazan"). These rejections are hereby respectfully traversed.

Regarding claims 7, 8-11, 12-17, and 29-36, these claims are dependent upon independent claim 1. Since claim 1 should be allowable for at least the reasons discussed above, claims 7, 8-11, 12-17, and 29-36 should be allowable by virtue of their dependency on claim 1. Accordingly, Applicant respectfully submits that the aforementioned obviousness rejection of claims 7, 8-11, 12-17, and 29-36 is now moot.

In view of the foregoing, Applicant respectfully requests that the aforementioned obviousness rejection of claims 7, 8-11, 12-17, and 29-36 be withdrawn.

V. CONCLUSION

In view of the foregoing, Applicant respectfully submits that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

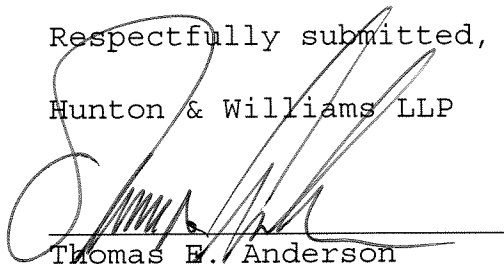
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Respectfully submitted,
Hunton & Williams LLP

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9/23/10

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